



## SOCIAL SECURITY

Office of the Commissioner

March 27, 2017

Enclosed is the Social Security Administration's (SSA) Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Report for Fiscal Year (FY) 2016. Congress intended the No FEAR Act to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable. SSA's mission is to deliver Social Security services that meet the changing needs of the public. Our service principles include adherence to the law and cultural sensitivity. To maximize our effectiveness, we seek to achieve an exemplary Equal Employment Opportunity (EEO) program.

The No FEAR Act requires agencies to prepare an annual report describing: (1) their efforts to improve compliance with the employment discrimination and whistleblower protection laws; and (2) the status of complaints brought against the agency under these laws. The No FEAR Act Annual Report must include specific information on each agency's EEO complaints activity (including Federal district court cases) and resulting disciplinary actions, Judgment Fund reimbursements, and an analysis of trends, causation, and practical knowledge gained through experience.

The No FEAR Act requires agencies to submit their reports to the President pro tempore of the Senate, the Speaker of the House of Representatives, the Senate Committee on Governmental Affairs, the House Committee on Government Reform, each committee of Congress with jurisdiction relating to the submitting agency, the Equal Employment Opportunity Commission, the Office of Personnel Management (OPM), and the Attorney General. Therefore, we are providing our FY 2016 No FEAR Act Report to the following members of the 115th United States Congress:

The Honorable Paul D. Ryan  
Speaker of the House of Representatives

The Honorable Sam Johnson  
Chairman, Subcommittee on Social Security, House Committee on Ways and Means

The Honorable John Larson  
Ranking Member, Subcommittee on Social Security, House Committee on Ways and Means

The Honorable Jason Chaffetz  
Chairman, House Committee on Oversight and Government Reform

The Honorable Elijah Cummings  
Ranking Member, House Committee on Oversight and Government Reform

The Honorable Tom Cole  
Chairman, Subcommittee on Labor, Health and Human Services, Education, and Related  
Agencies, House Committee on Appropriations

The Honorable Rosa DeLauro  
Ranking Member, Subcommittee on Labor, Health and Human Services, Education, and  
Related Agencies, House Committee on Appropriations

The Honorable Bob Goodlatte  
Chairman, House Committee on the Judiciary

The Honorable John Conyers, Jr.  
Ranking Member, House Committee on the Judiciary

The Honorable Diane Black  
Chairman, House Committee on the Budget

The Honorable John Yarmuth  
Ranking Member, House Committee on the Budget

The Honorable Michael R. Pence  
President of the Senate

The Honorable Orrin Hatch  
President Pro Tempore

The Honorable Orrin Hatch  
Chairman, Senate Committee on Finance

The Honorable Ron Wyden  
Ranking Member, Senate Committee on Finance

The Honorable Bill Cassidy  
Chairman, Subcommittee on Social Security, Pensions, and Family Policy,  
Senate Committee on Finance

The Honorable Sherrod Brown  
Ranking Member, Subcommittee on Social Security, Pensions, and Family Policy,  
Senate Committee on Finance

The Honorable Ron Johnson  
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Claire McCaskill  
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs



The Honorable Roy Blunt  
Chairman, Subcommittee on Labor, Health and Human Services, Education, and Related  
Agencies, Senate Committee on Appropriations

The Honorable Patty Murray  
Ranking Member, Subcommittee on Labor, Health and Human Services, Education, and  
Related Agencies, Senate Committee on Appropriations

The Honorable Charles Grassley  
Chairman, Senate Committee on the Judiciary

The Honorable Dianne Feinstein  
Ranking Member, Senate Committee on the Judiciary

The Honorable Mike Enzi  
Chairman, Senate Committee on the Budget

The Honorable Bernie Sanders  
Ranking Member, Senate Committee on the Budget

The Honorable Susan Collins  
Chairwoman, Senate Special Committee on Aging

The Honorable Bob Casey  
Ranking Member, Senate Special Committee on Aging

The Honorable Lamar Alexander  
Chairman, Senate Committee on Health, Education, Labor and Pensions

The Honorable Patty Murray  
Ranking Member, Senate Committee on Health, Education, Labor and Pensions

Also pursuant to the No FEAR Act requirements, we are providing our Fiscal Year 2016 No  
FEAR Act Report to the following members of the Executive Branch:

The Honorable Victoria A. Lipnic  
Chair, U.S. Equal Employment Opportunity Commission

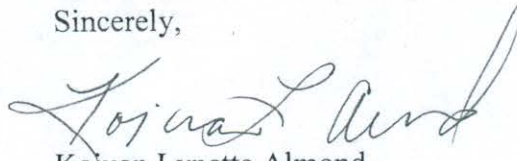
The Honorable Jeff Sessions, III  
Attorney General, U.S. Department of Justice

The Honorable Kathleen McGettigan  
Acting Director, U.S. Office of Personnel Management

The Social Security Administration's Office of Civil Rights and Equal Opportunity prepared this  
No FEAR Act Report pursuant to Congressional requirements.

If you have any questions, please contact Royce Min, Acting Deputy Commissioner for Legislation and Congressional Affairs, at 202-358-6030. If your staff has any questions, they may contact me at 410-965-4531.

Sincerely,

A handwritten signature in black ink, appearing to read "Kojuan Lynette Almond". The signature is fluid and cursive, with a large, sweeping initial "K" and a long, trailing flourish at the end.

Kojuan Lynette Almond

EEO Director

Office of Civil Rights and Equal Opportunity



# Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act

## Annual Report

Social Security Administration

*Fiscal year 2016*







**Notification and Federal Employee  
Antidiscrimination and  
Retaliation (No FEAR) Act  
Annual Report  
Fiscal Year (FY) 2016**

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## **Social Security Administration (SSA) No FEAR Act Report Fiscal Year (FY) 2016**

The No FEAR Act requires Federal agencies to submit an annual report to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission (EEOC), the United States Attorney General, and the Office of Personnel Management (OPM). This report must describe (1) the agency's efforts to improve compliance with the employment discrimination and whistleblower protection laws, and (2) the status of complaints brought against the agency under these laws. The reporting requirements are in section 203 of the No FEAR Act. The agency must respond to the italicized items below as stated in section 203.

### **Section I. Summary of District Court Cases (FY 2016)**

The data below show all cases and payments to the Judgment Fund in FY 2016, regardless of the case filing date. Since complainants may file a single case under multiple statutes, the number of cases will not total. Also, the total number of cases settled, pending, and adjudicated will not equal the total number filed because of cases filed before FY 2016, but the case disposition was rendered in FY 2016.

*1. The number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) of the No FEAR Act, in which discrimination on the part of the agency was alleged:*

- Total pending cases at close of FY 2016: 23
- The total pending cases alleged violations of the following laws:
  - Title VII of the Civil Rights Act (Title VII): 16 cases
  - Age Discrimination in Employment Act (ADEA): 11 cases
  - Rehabilitation Act (Disability): 12 cases
- Of the total 23 pending cases at the close of FY 2016, 15 were cases received in FY 2015.
- The 15 cases alleged violations of the following laws:
  - Title VII: 12 cases
  - ADEA: 9 cases
  - Disability: 8 cases

*2. The status or disposition of cases described in the above response:*

- Federal court cases adjudicated in FY 2016: 16
  - Dismissed/Judgment for SSA: 15
  - Judgment against SSA: 0
  - Settled: 1



3. *The amount of money required to be reimbursed by the agency under section 201 in connection with each case, separately identifying the aggregate amount of the reimbursements attributable to the payment of attorneys' fees, if any:*
  - Total: \$0
  - Attorney's Fees: \$0
4. *The number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1) of section 201(a) of the No FEAR Act.*
  - SSA disciplined one employee (14-day suspension).

## **Section II. Year-End Data**

5. *The final year-end data posted under section 301(c)(1)(B) for FY 2016 (without regard to section 301(c)(2)).*
  - See Attachment A for SSA's No FEAR Act data for FY 2015. SSA updates the data quarterly and posts the information online at <http://www.ssa.gov/eo/nofear>.

## **Section III. Disciplinary Policies and Administrative Discipline**

6. *A detailed description of —*
  - A. *The agency's policy implemented relating to appropriate disciplinary actions against a Federal employee who –*
    - i. *discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2) of the No FEAR Act, or*
    - ii. *committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2), and*
  - See Attachment B for SSA's Notification of Federal Employee Antidiscrimination and Retaliation Act Disciplinary Policy.
  - B. *With respect to these laws, the number of employees disciplined in accordance with the agency's policy and the specific nature of the disciplinary action taken.*

SSA imposed discipline on 12 employees in FY 2016 for engaging in actions constituting discrimination, retaliation, or harassment. The disciplinary actions included seven reprimands, four suspensions, and one removal. Additionally, we provided counseling and required participation in EEO Sensitivity Training, where appropriate.

## Section IV. Analysis of Discrimination Complaints

7. *An analysis of the information described under paragraphs (1) through (6) above (in conjunction with data the agency provided to the Equal Employment Opportunity Commission in compliance with 29 C.F.R. Part 1614), including:*

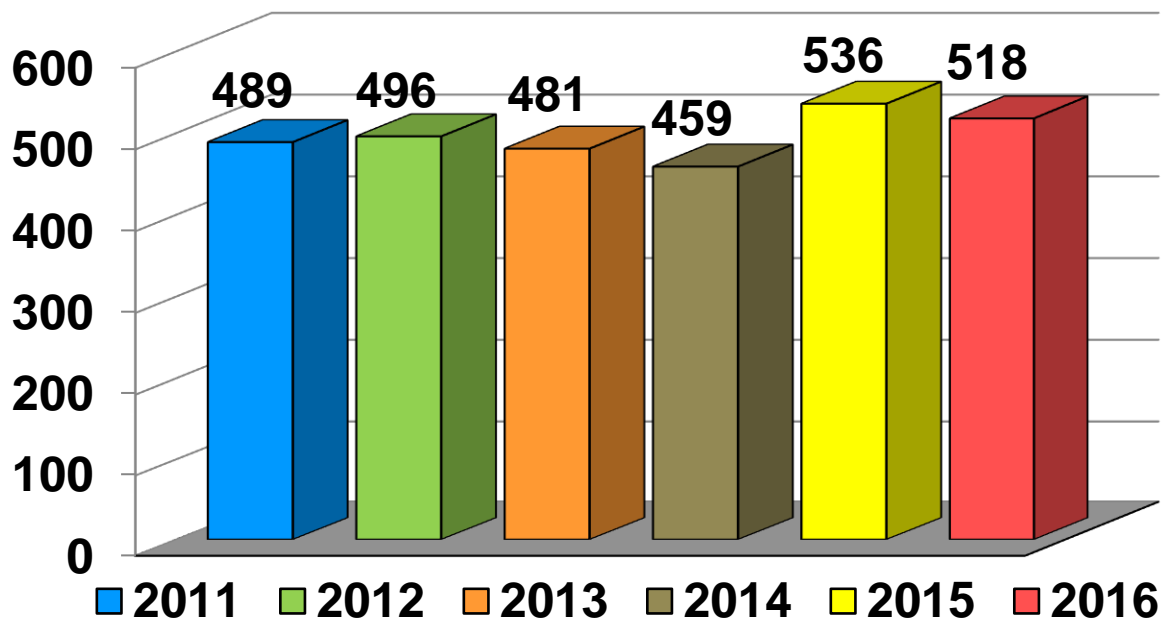
- a. An examination of trends;*
- b. Causal analysis;*
- c. Practical knowledge gained through experience; and*
- d. Any actions planned or taken to improve the agency's complaint or civil rights programs.*

### A. Examination of Trends and Causal Analysis

In FY 2016, SSA recorded 18 fewer EEO complaints filed (518) as compared to FY 2015 (536), which represents a 3.36 percent decline in complaints filed. Between FYs 2011 through FY 2016, the least number of complaints filed occurred in FY 2014, and the highest number of complaints filed occurred in FY 2015. Over the last six fiscal years, the agency averaged 496 EEO complaints filed.

The chart below shows the agency's top bases as Disability, Reprisal, Race, and Age, which have remained consistent for the past six years.

Total EEO Formal Complaints Filed FY 2011 – FY 2016



The Agency's top issues, Harassment (Non-Sexual), Promotion/Non-Selection, Evaluation/Appraisal, and Reasonable Accommodation have remained consistent over the past six years. The top bases for all Federal agencies are Reprisal, Race, and Sex, as reported in the EEOC's FY 2014 Annual Report on the Federal Work

Force. The top issues for all Federal agencies are Harassment (Non-Sexual), Disciplinary Action, and Terms/Conditions of Employment.

<b>Top Bases Fiscal Year FY 2016</b>	<b>Top Issues Fiscal Year FY 2016</b>
Disability (254)	Harassment (Non-Sexual) (241)
Reprisal (251)	Promotion/Non-Selection (155)
Race (205)	Evaluation/Appraisal (76)
Age (191)	Reasonable Accommodation (71)
<b>Top Bases Fiscal Years FY 2011 - FY 2015</b>	<b>Top Issues Fiscal Years FY 2011 - FY 2015</b>
Disability	Harassment (Non-Sexual)
Reprisal	Promotion/Non-Selection
Age	Evaluation/Appraisal
Race	Reasonable Accommodation

In FY 2016, SSA completed 550 investigations of EEO complaints with a timeliness rate of 47.6 percent. When comparing FY 2015 to FY 2016, the agency completed 200 more investigations, increased the total number of timely investigations by 131 percent, and improved the timeliness rate by 18.2 percent in FY 2016. The Agency has made great strides in the processing of investigations.

	<b>Fiscal Year 2011</b>	<b>Fiscal Year 2012</b>	<b>Fiscal Year 2013</b>	<b>Fiscal Year 2014</b>	<b>Fiscal Year 2015</b>	<b>Fiscal Year 2016</b>
Total of Investigations Completed	408	339	384	352	350	550
Total of Timely Investigations Completed	296	279	155	177	103	238
Percent of Timely Investigations Completed	72.5%	82.3%	40.4%	50.3%	29.4%	43.3%
Total Average Days to Complete Investigations	190	195	252	257	287	255

SSA processed 53 fewer pre-complaint counseling cases in FY 2016 (998) compared to FY 2015 (1051), a 5 percent decrease in counselings. We have steadily improved our timely processing of pre-complaint counselings since FY 2013. Of the 998 counselings, 94.6 percent were timely. Our overall resolution rate increased slightly, to nearly 50 percent in FY 2016 compared to 48.5 percent in FY 2015. A pre-complaint counseling “resolution” includes a settlement, a withdrawal, or no formal complaint filed.

	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Number of Counselings Closed</b>	903	917	853	909	1051	998
<b>Number of Timely Counselings</b>	847	871	746	821	978	944
<b>Percentage of Timely Counselings</b>	93.8%	95.0%	87.5%	90.3%	93.1%	94.6%
<b>Percentage of Completed Counselings Resolved (Settled/Withdrawn/No Formal Filed)</b>	45.7%	45.8%	45.1%	49.0%	48.5%	49.9%

In FY 2016, SSA closed 53 EEO complaints with monetary corrective actions totaling \$809,946. This amount is significantly less than the total paid for monetary corrective actions in FY 2015, totaling \$1,525,575.

<b>Fiscal Year</b>	<b>Number of Cases Closed with Monetary Corrective Actions</b>	<b>Total Amount Paid</b>
FY 2016	53	\$809,946
FY 2015	55	\$1,525,575
FY 2014	46	\$851,742
FY 2013	51	\$1,051,484
FY 2012	28	\$988,490
FY 2011	26	\$120,909

## **B. Practical Knowledge Gained Through Experience**

As the agency administers the Social Security programs and provides services that meet the changing needs of the public, we also endeavor to meet the needs of our valued staff. Our employees are the key to the agency’s success, and provide the highest quality service to the American public. For the agency to meet its goals, a high-performing workforce is crucial. We will continue to attract, retain, develop, motivate, and reward a diverse workforce and continuously foster a culture of improvement. A commitment to our talented and richly diverse employees enabled the agency to maintain its ranking in the Top Ten Federal Agencies “Best Places to Work” report for the eighth consecutive year. SSA ranked ninth overall for large agencies, however, the data showed a 2.9 decrease in SSA employee job satisfaction and commitment from 2015.

SSA is strongly committed to the principles of EEO and the successful implementation of its EEO Program. This commitment is seen at all levels of the agency, from the



Commissioner's office to the agency's senior executives, managers, and employees, all of whom are dedicated to creating and maintaining an environment free from discrimination, retaliation, and harassment.

SSA is committed to fostering a diverse and inclusive work environment, where EEO applies to all, and employment decisions are merit-based. Our EEO policy clearly conveys our commitment to an intolerance of discrimination and harassment of any kind, and our effort to ensure that all individuals have an equal opportunity for success.

On June 21, 2016, former Acting Commissioner Colvin reaffirmed SSA's commitment to EEO principles by issuing the agency's annual EEO Policy to all employees. SSA also issued the Annual Personnel Reminders, which included sections on Discrimination/Harassing Conduct and Whistleblowing, along with SSA's No FEAR Act Notice.

During FY 2016, SSA conducted the following activities to enhance employee awareness of workforce diversity and promote agency antidiscrimination principles:

- We temporarily promoted employees into support staff, decision writers, and management positions. These promotions allowed the employees to gain practical and additional knowledge and experience. We provided formal training to Senior Case Technicians, Decision Writers, Group Supervisors, and newly hired Administrative Law Judges.
- We provided managers and supervisors across the Regions advanced training in EEO and reasonable accommodation.
- We provided Regional Executive Staff with training in Alternative Dispute Resolution.
- We provided Diversity Recruitment Training for managers on the importance of recruiting a diverse workforce.
- We distributed EEO posters to managers to post in prominent areas to assure awareness and compliance.
- We provided the new anti-harassment policy information to employees. We referred employees' harassment allegations to the Harassment Prevention Officers.
- We trained 263 regional managers on EEO processes and official duty time for representatives for their EEO related involvement. This training included information on discrimination complaints, harassment, and reasonable accommodations.
- We provided the Field Managers Workshop for 16 managers. Topics included the Reasonable Accommodation Wizard, best practices in reasonable accommodations, and EEO time requests.

- We provided management with information, training, and the resource site about EEO One Stop, a comprehensive online library of up-to-date, legally compliant, uniform information about EEO laws, policies, and procedures, for employees, managers, and EEO practitioners.
- We maintained an Interagency Agreement with the United States Postal Service to help reduce EEO case inventories.
- We continued prioritizing workloads to ensure integrity in workload processing and eliminate aged cases.
- We created independent oversight of data accuracy in iComplaints (our complaints processing tracking system).
- We arranged for EEO Collateral Duty Counselors to receive their 8-hour refresher training that included, “how to refer harassment allegations to the Harassment Prevention Officer.”
- We provided 32 hours of EEO training to new EEO Counselors from eight regions and developed refresher training for existing Counselors.
- We trained Shared Neutral collateral duty mediators in a 32-hour training refresher course.
- We conducted a Diversity Day training and enrichment session. This year’s theme was “Going for the Gold – Achieving Your Goals”. This two-hour session also included a panel discussion with Executives providing tips on how to succeed.
- We provided career development training on “Applying for Jobs” and “Develop Your Core.”
- We maintained regular update meetings to determine case status and processing times for each stage of the EEO process, identified bottlenecks, and implemented procedures to move cases.
- We processed 53 fewer pre-complaint counseling cases in FY 2016, representing a five percent decrease in counselings, while timeliness has increased by 2 percent.
- We processed six more Final Agency Decisions (FADs) in FY 2016 and improved the timeliness by 46 percent.
- We achieved a 91 percent timeliness rate in complying with settlement requirements.
- We executed eight percent more EEO case settlement in FY 2016 than FY 2015;

through the efforts of the new ADR Policy holding managers accountable for EEO compliance and ADR participation.

- We maintained the Barrier Obliteration Program (BOP) to proactively identify and eliminate real and perceived barriers to EEO, analyzed D&I Survey results and EEO data, prepared a report, and briefed the first Deputy Commissioner-level component participating in BOP.
- We continued the long-standing practice of meeting with the Acting Commissioner and agency senior executives to provide detailed analyses of the workforce composition of their components, discuss trends, and provide recommendations to improve areas of underrepresentation.
- We engaged in internal and external outreach activities with agency executives, managers, and other federal, state, and local EEO practitioners nationwide to discuss EEO legal developments and ensure continued compliance with antidiscrimination laws.
- We analyzed and provided recommendations on Senior Executive Service Candidate Development Program and Advanced Leadership Program selection rates compared to applicant rates, to ensure diversity in the selection process.
- We held eight Special Emphasis Program (SEP) Observances and two memorial observances at SSA Headquarters.
- We held the second Headquarters Unity Celebration, honoring workforce diversity with exhibits highlighting the many nationalities of SSA employees demonstrating the theme, “Diversity Works at SSA!”
- We continued hosting SEP and diversity events for regional employees that highlighted the ethnicity and culture of diverse groups represented in the regions, in conjunction with our eight advisory councils.
- We upgraded and continued the Minority Serving Institutions (MSI) Reporting System nationwide, to facilitate tracking MSI support activities for SSA’s annual MSI Report to the Department of Education.
- We continued to disseminate grant information to institutions of higher education, including MSIs, to provide students with advanced educational opportunities.
- We continued visiting Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and Asian American and Native American Pacific Islander Serving Institutions to recruit a diverse workforce.
- We participated in recruitment events hosted by colleges and universities, including Minority Serving Institutions; attended job fairs and career days; and provided information on agency employment opportunities to students at colleges and universities.

- We networked with the educational leaders at the Historically Black Colleges and Universities Conference.
- We submitted the annual Report on Hispanic Employment in SSA to the Office of Personnel Management, per Executive Order 13171, documenting Hispanic representation in SSA.
- We reminded employees of the reasonable accommodation program and the importance of providing information on their disability status, if applicable.
- We continued promotion and implementation of wEEO Radio, an innovative mechanism to disseminate EEO training to managers via bimonthly “radio broadcasts” (teleconferences) in a talk show format; the first broadcast featured distinguished guests from the EEOC, Department of Agriculture, and Department of the Interior.
- We co-chaired the Proactive Prevention Workshop as part of the EEOC’s efforts to devise ways to measure EEO progress in the federal sector. The EEOC has indicated its desire to incorporate the recommendations into its efforts to revise guidelines for the Management Directive-715 Annual Program Status Report for all federal agencies.
- We hosted the second EEO Innovations Summit (at Headquarters and via live broadcast), hosting 50 individuals from federal, state, and local EEO partners in a forum to showcase and share innovative practices and build coalitions.
- We trained additional headquarters EEO staff members as FAD writers.
- We participated in EEOC Baltimore Area Seminar, Micropact iComplaints User training.
- We provided ongoing training on iComplaints to new and tenured EEO Specialists.
- We participated in the Federal Dispute Resolution’s National Complaints Resolution Conference held in Washington, DC.
- We provided for EEO headquarters employees participation in a set of personal and team development activities including the use of the “Golden Personality Type Profiler” and the “Enneagram.”
- We maintained consistent headquarters All-Hands meetings with programs to help EEO employees understand their contribution to the agency mission, discuss career motivation and development, promote diversity and collaboration, and learn the missions of other components.
- We continued upgrades of the iComplaints system to generate counseling reports directly, reducing redundancy, and improving accuracy.



- We created iComplaints University (iCU) as a reference tool for all iComplaints users. iCU is a SharePoint site where users find Standard Operating Procedures, training documents, and participate in discussion forums.
- We created an iComplaints Helpdesk for users to call or email their iComplaints questions for a quick response.
- We maintained an Executive Dashboard for iComplaints to prepare standard and custom reports, validate data, and identify problematic reporting areas.
- We maintained contractual agreements with expert consultants to provide guidance on short and long-range strategic plans, EEO policy development, training, and quality enhancement.
- We created an infrastructure that holds managers and employees accountable for performance.
- We continued regular “OCREO M&M’s” (Meaningful Messages) via email to promote a culture of excellence for headquarters EEO management and employees.
- We prepared quarterly and monthly EEO statistical reports and ad hoc reports for the Acting Commissioner, Deputy Commissioners, and Regional Commissioners.
- We continued interagency benchmarking with the Department of Labor, General Services Administration, Internal Revenue Service, and the United States Department of Agriculture to build relationships and identify best practices.
- We promoted collaboration and collegiality during monthly meetings with Regional Civil Rights and Equal Opportunity Managers.
- We built a relationship with unions via regular participation in the Union Forum and Affirmative Employment Program meetings.
- We briefed the Acting Commissioner regularly on the state of EEO at SSA.
- We established a new Employer of Choice for Persons with Disabilities Program, complied with, and implemented the terms of a decision by EEOC involving employees having certain disabilities. This resulted in an increased number of disability claims filed.
- We maintained our Anti-Harassment Workgroup and enhanced our Anti-Harassment Policy, providing harassment prevention training to numerous agency personnel. We continued developing our Standard Operating Procedures for issuance in first quarter FY 2016 to ensure uniform processing of harassment complaints.

- We continued actively promoting the recruitment and hiring of veterans, veterans with disabilities, and individuals with disabilities by using Schedule A and Veterans Recruitment Appointment authorities.
- We developed and maintained relationships with local and state agencies, and Vocational Specialists within the U.S. Department of Veteran Affairs, via SSA's Special Placement Coordinator. This supported returning veterans seeking employment information and assistance.
- We selected Center for National Recruitment (CNR) employees to participate in workforce profile and recruitment event discussions with headquarters EEO Staff, in collaboration with the Diversity Inclusion Staff and the headquarters Advisory Councils. These opportunities helped enhance employee awareness of workforce.
- We participated in 32 career fairs throughout the country with a focus on enhancing recruiting top talent in diverse candidate pools.

### **C. Actions Planned to Improve Agency Complaint or Civil Rights Program**

In FY 2017, SSA will address the following objectives to improve our program:

- continue efforts to attain model EEO agency status;
- continue improving the quality, timeliness, and accuracy of our acceptance letters, Reports of Investigation (ROIs), and Final Agency Decisions;
- ensure that current managers and supervisors continue to receive EEO refresher training and provide EEO training to new managers and supervisors;
- guarantee that all employees receive biennial training on their rights under federal antidiscrimination and whistleblower protection laws, as required by the No FEAR Act;
- maintain a minimum 2.0 percent hiring rate for Employees with Targeted Disabilities (EWTDs);
- improve EEO complaint processing to consistently meet the mandated EEOC timeframes for processing discrimination complaints;
- focus strategically and proactivity on identifying and eliminating barriers to EEO (BOP);
- provide access to videophone technology and Video Relay Service for deaf and hard-of-hearing employees;

- enhance the software we use to process reasonable accommodation requests to increase application performance and the expand management information capabilities;
- revise the process in which we process requests for reasonable accommodation; and
- replace the existing training Video on Demand (VOD) on reasonable accommodations with an up-to-date VOD that covers the process for employees and managers.

8. *Any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.*

There are no anticipated adjustments to comply with the requirements under section 201.

## Attachment A

### Equal Employment Opportunity (EEO) Complaint Data (FY 2011 - FY 2016)



## Equal Employment Opportunity Data Posted

### Pursuant to the No Fear Act: SSA Internal Complaint Activity

Data as of September 30, 2016

Complaint Activity Sec.1614.704 (a),(b), and (c)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2016 thru 09/30
	2011	2012	2013	2014	2015	
Number of Complaints Filed	489	496	481	459	536	519
Number of Complainants	448	453	437	434	489	469
Repeat Filers	35	37	36	24	40	40
Complaints by Basis Sec.1614.704(d) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2016 thru 09/30
	2011	2012	2013	2014	2015	
Race	214	179	181	184	209	207
Color	37	37	33	26	38	37
Religion	24	12	22	16	20	24
Reprisal	236	257	228	210	235	251
Sex	152	153	172	155	177	179
National Origin	42	49	53	47	61	82
Equal Pay Act	0	0	0	0	1	1
Age	236	193	176	184	226	195

<b>Complaints by Basis Sec.1614.704(d)</b> <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	<b>Comparative Data (Sec.1614.705)</b> <b>Previous Fiscal Year Data</b>					<b>2016 thru 09/30</b>
	2011	2012	2013	2014	2015	
Disability	153	163	150	149	208	202
Genetics	0	0	0	1	1	0
Pregnancy Discrimination Act	0	3	4	1	2	2
Non-EEO Basis	57	42	38	56	67	62
<b>Complaints by Issue Sec.1614.704 (e)</b> <i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	<b>Comparative Data (Sec.1614.705)</b> <b>Previous Fiscal Year Data</b>					<b>2016 thru 09/30</b>
	2011	2012	2013	2014	2015	
Appointment/Hire	15	22	11	8	15	15
Assignment of Duties	50	51	36	37	29	21
Awards	24	23	34	9	12	8
Conversion to Full-time	3	0	1	1	2	1
<b>Disciplinary Action</b>						
Demotion	9	3	7	8	3	0
Reprimand	26	21	21	11	18	20
Removal	3	5	2	2	9	2
Suspension	25	18	16	11	11	11
Other	4	8	7	2	13	4

<b>Complaints by Issue Sec.1614.704 (e)</b> <i>Note: Complaints can be filed alleging multiple issues.  The sum of the issues may not equal total complaints filed.</i>	<b>Comparative Data (Sec.1614.705)</b> <b>Previous Fiscal Year Data</b>					<b>2016 thru 09/30</b>
	2011	2012	2013	2014	2015	
Duty Hours	1	4	0	3	4	1
Evaluation Appraisal	78	83	69	59	77	78
Examination/Test	0	0	0	0	0	0
<b>Harassment</b>						
Non-Sexual	211	239	243	225	231	241
Sexual	13	13	12	18	15	17
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	13	22	8	8	7	9
Promotion/Non-Selection	157	158	127	138	165	158
<b>Reassignment</b>						
Denied	13	14	14	13	13	17
Directed	9	11	3	10	11	6
Reasonable Accommodation	47	54	50	52	83	71
Reinstatement	2	1	2	0	6	0
Religious Accommodation	0	0	0	0	0	1
Retirement	8	6	4	9	3	5

<b>Complaints by Issue Sec.1614.704 (e)</b> <i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	<b>Comparative Data (Sec.1614.705)</b> <b>Previous Fiscal Year Data</b>					<b>2016 thru 09/30</b>
	2011	2012	2013	2014	2015	
Telework	0	0	0	0	0	1
Termination	56	24	17	13	49	42
Terms/Conditions of Employment	43	30	33	24	12	15
Time and Attendance	49	57	44	36	41	32
Training	27	18	10	8	15	12
Other	39	30	40	25	7	43
<b>Processing Time Sec.1614.704(f) the average length of time it has taken an agency to complete, respectively, investigation in final action for:</b>	<b>Comparative Data (Sec.1614.705)</b> <b>Previous Fiscal Year Data</b>					<b>2016 thru 09/30</b>
	2011	2012	2013	2014	2015	
<b>Complaints pending (for any length of time) during fiscal year</b>						
Average number of days in investigation stage	185	193	251	265	286	284
Average number of days in final action stage	76	87	176	140	134	69
<b>Complaints pending (for any length of time) during fiscal year where hearing was requested</b>						
Average number of days in investigation stage	183	191	244	243	258	281
Average number of days in final action stage	35	35	111	102	114	44
<b>Complaints pending (for any length of time) during fiscal</b>						

Processing Time Sec.1614.704(f) the average length of time it has taken an agency to complete, respectively, investigation in final action for:						Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2016 thru 09/30				
						2011	2012	2013	2014	2015					
year where hearing was not requested															
Average number of days in investigation stage						190	199	265	292	321	293				
Average number of days in final action stage						132	154	243	186	152	77				
Complaints Dismissed by Agency Sec.1614.704(g)				Comparative Data (Sec.1614.705) Previous Fiscal Year Data							2016 thru 09/30				
				2011	2012	2013	2014	2015							
Total Complaints Dismissed by Agency				86	55	75	41	87			62				
Average days pending prior to dismissal				103	160	147	83	88			85				
Complaints Withdrawn by Complainants															
Total complaints Withdrawn by Complainants				61	55	45	41	46			45				
Total Final Actions Finding Discrimination (Sec.1614.704 (i))				Comparative Data (Sec.1614.705) Previous Fiscal Year Data							2016 thru 09/30				
				2011		2012		2013		2014			2015		
				#	%	#	%	#	%	#			%	#	%
Total Number Findings				2		4		4		0		12		12	
Without Hearing				0	0	0	0	0	0	0	0	4	100	10	83
With Hearing				2	100	4	100	4	100	0	0	8	100	2	17

Findings of Discrimination Rendered by Basis Sec.1614.704(i) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	2		4		4		0		12		7	
Race	1	0	0	0	1	25	0	0	1	8	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	1	25	0	0	0	0	0	0
Reprisal	1	50	3	75	1	25	0	0	8	67	1	14
Sex	0	0	0	0	0	0	0	0	4	33	0	0
National Origin	0	0	0	0	0	0	0	0	1	8	0	0
Age	1	50	0	0	2	50	0	0	2	17	0	0
Disability	0	0	1	25	1	25	0	0	4	33	7	100
Non-EEO	0	0	0	0	0	0	0	0	1	8	0	0
Findings After Hearing	2	100	4	100	4	100	0	0	8	67	2	0
Race	1	50	0	0	1	25	0	0	1	13	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	1	25	0	0	0	0	0	0
Reprisal	1	50	3	75	1	25	0	0	7	88	1	50

Findings of Discrimination Rendered by Basis Sec.1614.704(i) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Sex	0	0	0	0	0	0	0	0	3	38	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	50	0	0	2	50	0	0	2	25	0	0
Disability	0	0	0	0	1	25	0	0	1	13	2	100
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0	0	0	0	0	0	0	0	4	33	5	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	25	0	0
Sex	0	0	0	0	0	0	0	0	1	25	0	0
National Origin	0	0	0	0	0	0	0	0	1	25	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0



Findings of Discrimination Rendered by Basis Sec.1614.704(i) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>					Comparative Data (Sec. 1614.705 Previous Fiscal Year Data								2016 thru 09/30			
					2011		2012		2013		2014				2015	
					#	%	#	%	#	%	#	%	#	%	#	%
Disability					0	0	0	0	0	0	0	0	3	75	5	100
Non-EEO					0	0	0	0	0	0	0	0	1	25	0	0
Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data											2016 thru 09/30				
	2011		2012		2013		2014		2015							
	#	%	#	%	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	2		4		4		0		12			7				
Appointment/Hire	0	0	0	0	0	0	0	0	1	8		0	0			
Assignment of Duties	0	0	0	0	0	0	0	0	0	0		1	14			
Awards	0	0	0	0	0	0	0	0	0	0		0	0			
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0		0	0			
Disciplinary Action																
Demotion	0	0	0	0	0	0	0	0	0	0		0	0			
Reprimand	0	0	0	0	0	0	0	0	2	17		0	0			

Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Suspension	0	0	0	0	0	0	0	0	1	8	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	2	50	0	0	0	0	2	17	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	1	25	0	0	0	0	3	25	0	0
Sexual	0	0	0	0	0	0	0	0	4	33	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	2	100	0	0	3	75	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	1	25	0	0	1	8	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Directed	0	0	1	25	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	1	25	1	25	0	0	3	25	6	86
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	2	17	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	1	8	0	0
Time and Attendance	0	0	1	25	0	0	0	0	2	17	1	14
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	2	100	4	100	4	100	0	0	8	67	2	0
Appointment/Hire	0	0	0	0	0	0	0	0	1	13	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	1	50
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Disciplinary Action												
Reprimand	0	0	0	0	0	0	0	0	2	25	0	0
Suspension	0	0	0	0	0	0	0	0	1	13	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	2	50	0	0	0	0	2	25	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	1	25	0	0	0	0	3	38	0	0
Sexual	0	0	0	0	0	0	0	0	2	25	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	2	100	0	0	3	75	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Reassignment												
Denied	0	0	0	0	1	25	0	0	1	13	0	0
Directed	0	0	1	25	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	1	25	1	25	0	0	0	0	1	50
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	1	13	0	0
Time and Attendance	0	0	1	25	0	0	0	0	2	25	1	50
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0	0	0	0	0	0	0	0	4	33	5	100
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	2	50	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	3	75	5	100
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	2	50	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0



Findings of Discrimination Rendered by Issue Sec.1614.704(j) Findings of Discrimination Rendered by Basis Sec.1614.704(i)	Comparative Data (Sec. 1614.705 Previous Fiscal Year Data										2016 thru 09/30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Pending Complaints Filed in Previous Fiscal Years by Status (Sec.1614.704(l))						Comparative Data Previous Fiscal Year Data					2016 thru 09/30	
						2011	2012	2013	2014	2015		
Total complaints from previous Fiscal Years						783	685	526	428	457	536	
Total Complainants						646	642	414	364	396	454	
Number complaints pending												
Investigation						40	41	54	13	95	83	
ROI Issued, pending Complainant's action						1	3	2	0	2	5	
Hearing						303	326	265	315	355	455	
Final Agency Action						43	63	74	74	74	72	
Appeals with EEOC Office of Federal Operations						803	901	973	1069	1143	1217	
Complaint Investigations (Sec.1614.704(m))						Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2016 thru 09/30	
						2011	2012	2013	2014	2015		
Pending Completion Where Investigation Exceeds Required Time Frames						60	64	48	80	140	65	

## Attachment B

### SSA's Notification of Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Disciplinary Policy

# **NOTIFICATION OF FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION**

## **(No FEAR) ACT DISCIPLINARY POLICY**

### **BACKGROUND**

The No FEAR Act holds Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. It also requires Federal agencies to notify employees of their rights and remedies under the employment discrimination and whistleblower protection laws.

### **1. PURPOSE**

This document establishes our disciplinary policy and procedures for ensuring that we take appropriate disciplinary or corrective action if discrimination or whistleblower violations occur. In accordance with Federal law, this policy strengthens our existing anti-discrimination and retaliation policies and encourages resolution of complaints at the earliest possible opportunity.

### **2. POLICY**

Consistent with Federal law, it is our policy to treat employees and applicants for employment fairly and equitably, with dignity and respect, regardless of race, color, national origin, sex (including sexual harassment, pregnancy, and gender identity), religion, age, disability, political affiliation, sexual orientation, marital status, parental status, genetic information (including family history), or military service. Discrimination and harassment on any of these bases, and retaliation against employees who oppose discrimination, violate Federal laws and this policy. We will not tolerate any form of discrimination, harassment, or retaliation against employees who exercise their equal employment opportunity (EEO) rights or report misconduct, gross mismanagement, waste, fraud, or abuse under the Whistleblower Protection Act (WPA), and we will continue to take necessary measures to protect their confidentiality.

Managers and supervisors are responsible for observing and enforcing applicable laws. We hold our managers, supervisors, and all other employees accountable for discrimination and whistleblower violations. While our *No FEAR Act Disciplinary Policy* applies solely to executives, managers, and supervisors, we will apply other appropriate policies to other employees who discriminate or commit whistleblower violations. Management will work with the Office of Civil Rights and Equal Opportunity (OCREO), the Office of the General Counsel (OGC), and the Office of Labor-Management and Employee Relations (OLMER) to fully evaluate claims or other indications of unlawful discrimination or retaliation. We retain the authority to determine whether disciplinary or other corrective action is warranted under Federal law or agency policy.

### **3. SCOPE**

Management will work with OCREO, OGC, and OLMER to effectively administer procedures in accordance with Federal law and policy.

### **4. SPECIAL INSTRUCTIONS**

Management will use these procedures in conjunction with our Annual Personnel Reminders, the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch, and any other applicable agency or Government-wide policy or regulation.

### **5. DEFINITIONS**

For purposes of this policy:

a. "Agency Counsel/Representative" means the agency's legal representative in the matter in question. Typically, this will be an employee of OGC, OLMER, or the Regional Labor Relations/Employee Relations (LR/ER) staff (including the Division of Quality Service in the Office of Disability Adjudication and Review).

b. "Corrective Action" means measures taken that are not disciplinary or adverse actions (e.g., training, policy changes).

(1) "Initiating Corrective Action" means taking firm steps toward scheduling the corrective action.

(2) "Effectuating Corrective Action" means completing or realizing the corrective action.

c. "Decision" means a determination reached after considering the facts and any applicable law. It refers to a final arbitration award, following decision on appeal or exceptions, if any, or a final determination of a Federal court or administrative body (e.g., Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), or Federal Labor Relations Authority (FLRA), following appeal, if applicable). This policy also applies to situations where we informally resolve disputes before an administrative or judicial decision is issued, but after reaching a management determination that discrimination occurred.

d. "Delegated Management Official" means the management official to whom the Commissioner has delegated authority to propose or decide an official action.

e. "Deputy Commissioner" means component Deputy Commissioner.

f. "Disciplinary Action" means measures taken to correct the conduct of an employee and may include a letter of reprimand, suspension, reduction in grade or pay, or removal from Federal service.

- (1) “Initiating Disciplinary Action” means issuing a proposal to discipline.
- (2) “Issuing Disciplinary Action” means issuing a letter of reprimand or a decision to discipline.
- (3) “Effectuating Disciplinary Action” means carrying out the discipline.

g. “Douglas Factors” are the pertinent mitigating and aggravating factors we consider in determining an appropriate penalty for misconduct. They are:

- (1) nature and seriousness of the offense;
- (2) employee’s job level and type of employment;
- (3) employee’s disciplinary record;
- (4) employee’s work record;
- (5) effect on supervisory confidence in the employee’s ability to perform assigned duties;
- (6) consistency of penalty with that for similar offenses;
- (7) consistency of penalty with any applicable table of penalties;
- (8) notoriety of offense;
- (9) employee’s notice of rules;
- (10) employee’s potential for rehabilitation;
- (11) mitigating circumstances; and
- (12) adequacy of alternative sanctions to deter future misconduct.

h. “Final Agency Decision (FAD)” means our conclusive determination, disposing of all issues involved in a formal EEO complaint.

## **6. COVERED ACTIONS**

In accordance with Section 8 (below), we will initiate a review to determine whether disciplinary or corrective action is warranted under the following circumstances:

- a. A FAD that includes a finding of discrimination.
- b. Final EEOC, MSPB, FLRA, or arbitration decisions that include findings of discrimination or violations of the WPA.
- c. Federal court decisions that include findings of discrimination or violations of the WPA and
- d. Informal resolutions based on SSA management’s decision that the underlying facts clearly demonstrate that a manager has violated the antidiscrimination or whistleblower protection laws.

Situations other than FADs, administrative findings, judicial findings, or informal resolutions may constitute covered actions under this policy. For example, a case may be withdrawn or dismissed for procedural reasons (e.g., timeliness), but management

nevertheless determines that a management official has violated the antidiscrimination or whistleblower protection laws. In view of Federal mandates to initiate appropriate disciplinary or corrective action for violations of the antidiscrimination or whistleblower protection laws, we must consider potential covered actions on a case-by-case basis.

## **7. RESPONSIBILITIES AND PROCEDURES**

a. All employees are responsible for fostering a work environment free of discrimination or retaliation.

b. OCREO, OGC, OLMER, and appropriate component management will share copies of Covered Actions and pertinent case files as described below:

(1) The agency counsel/representative must send any Covered Action not issued by OCREO and a copy of the pertinent case file(s) to the Associate Commissioner for OCREO, OLMER or the responsible Regional LR/ER Office, and the responsible Deputy Commissioner or equivalent executive. The agency counsel/representative must provide these documents as expeditiously as possible, but no later than two business days after receiving the Covered Action.

(2) If OCREO issues a FAD or receives a Covered Action before the agency counsel/representative receives it, OCREO will send a copy of the Covered Action along with a copy of the pertinent case file(s) to OLMER or the responsible Regional LR/ER Office, OGC, and the responsible Deputy Commissioner or equivalent executive. OCREO will provide these documents as expeditiously as possible, but no later than two business days after receiving or issuing the Covered Action.

c. Within ten business days of receiving a copy of the Covered Action, OLMER or the responsible Regional LR/ER Office, in conjunction with the servicing OGC office, will gather any additional case files and review the underlying circumstances leading to the Covered Action. OLMER or the responsible Regional LR/ER Office, in conjunction with the servicing OGC office, will document in a report the results of its review, including a recommendation on what disciplinary or corrective action (if any) is appropriate. OLMER or the responsible Regional LR/ER Office will forward the report to OCREO and to the appropriate component management, including the delegated management officials and the responsible Deputy Commissioner or equivalent executive. OLMER or the responsible Regional LR/ER Office will issue the report within 30 calendar days of receiving the Covered Action, or within any shorter time frame required to ensure that we satisfy an order of the EEOC, MSPB, FLRA, or arbitrator.

d. Management will fully consider the report issued by OLMER or the Regional LR/ER Office in determining whether to take disciplinary or corrective action. In all instances, management must consult with OLMER or the appropriate Regional LR/ER Office and the servicing OGC office in determining whether to take disciplinary or corrective action, and if so, the appropriate action to take. In so doing, management will evaluate the facts and apply the Douglas Factors to determine the appropriate penalty. Within the time frames

prescribed below, the Deputy Commissioner, equivalent executive, or designee must provide a written justification to OCREO in all instances where there is a decision not to take disciplinary or corrective action.

(1) A delegated management official deciding to take disciplinary or corrective action must initiate the action and notify OCREO and, if applicable, the responsible Regional Civil Rights and Equal Opportunity (CREO) staff within the time frame prescribed in final orders of the EEOC, MSPB, FLRA, or arbitrator.

The Deputy Commissioner, equivalent executive, or designee must report on initiating disciplinary action, issuing disciplinary action, effectuating disciplinary action, initiating corrective action, or effectuating corrective action to OCREO and, if applicable, to the responsible Regional CREO staff within ten business days of receiving the report from OLMER or the responsible Regional LR/ER Office. Additionally, the Deputy Commissioner, equivalent executive, or designee must report these events within any shorter time frame required to ensure that any applicable EEOC, MSPB, FLRA, or arbitrator order is satisfied. The Deputy Commissioner, equivalent executive, or designee also will report to OCREO any subsequent event canceling or rescinding disciplinary or corrective action. These reports are due to OCREO and, if applicable, to the responsible Regional CREO staff no later than ten business days after the subsequent event.

(2) A delegated management official declining to take disciplinary or corrective action must seek Deputy Commissioner, equivalent executive, or designee concurrence as soon as possible, so the executive may provide timely written justification to OCREO and, if applicable, to the responsible Regional (CREO) staff. The Deputy Commissioner, equivalent executive, or designee must provide the written justification no later than ten business days after receiving the report from OLMER or the responsible Regional LR/ER Office. Additionally, the Deputy Commissioner, equivalent executive, or designee must provide the written justification within any shorter time frame required to ensure that we satisfy any applicable EEOC, MSPB, FLRA, or arbitrator order.

e. At the end of each fiscal year, in accordance with the No FEAR Act, OCREO will prepare an annual report setting forth the number of disciplinary or corrective actions taken under this policy. The report will set forth the specific nature of the disciplinary or corrective action and will identify the Covered Action giving rise to the review that led to the disciplinary or corrective action. OCREO will submit the annual report to Congress, the EEOC, Department of Justice, and Office of Personnel Management (OPM) no later than 180 days after the end of the fiscal year.

## **8. PREVENTIVE MEASURES**

OCREO will continue the practice, started in 2006, of training all managers and employees concerning their rights and remedies under the Federal antidiscrimination and whistleblower protection laws. OCREO will repeat this training every two years and will ensure that it is



user-friendly and that managers and employees have sufficient notice of this training. OCREO views this requirement as a continuing opportunity to ensure compliance with the No FEAR Act, thereby preventing discrimination and the need for disciplinary or corrective action.

## **9. RESOURCES**

For further information regarding the No FEAR Act, please refer to [5 CFR 724](#) and our No FEAR Act Notice, located at <http://www.ssa.gov/eo/nofear/>. In addition, OPM's specific antidiscrimination policies relating to equal employment opportunity and prohibited personnel practices are located on OPM's website at [http://www.opm.gov/about\\_opm/nofear](http://www.opm.gov/about_opm/nofear). Additional information on Federal antidiscrimination, whistleblower protection, and retaliation laws are located on the EEOC website at [www.eeoc.gov](http://www.eeoc.gov) and on the Office of Special Counsel's (OSC) website at <http://www.osc.gov/library.htm#NoFearAct>.

If employees believe they have been the victim of whistleblower retaliation, they may file a written complaint (Form OSC-11--<http://www.osc.gov/forms.htm>) with OSC at 1730 M Street NW, Suite 218, Washington, D.C. 20036-4505, or online through the OSC website.

## Attachment C

SSA's No FEAR Act Notice  
Posted on the  
Agency's Internet Webpage  
<http://www.socialsecurity.gov/eo/nofear/>

## **EEO Data Posted Pursuant to the No FEAR Act**

### **No FEAR Act Notice**

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” which is now known as the No FEAR Act. One purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.” Public Law 107-174, Summary. In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” Public Law 107-174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

### **Antidiscrimination Laws**

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

This agency also prohibits discrimination based on parental status and sexual orientation. Executive Order 13152 states explicitly that discrimination based upon an individual’s status as a parent is prohibited within the Executive Branch of the Federal Government. The right to address sexual orientation discrimination derives from Agency policy.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, disability, parental status or sexual orientation you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with the Agency. See, e.g. 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a

discrimination complaint by filing a grievance through the Agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

#### Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site—<http://www.osc.gov>.

#### Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

#### Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

#### Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724. You may also contact the Office of Civil Rights and Equal Opportunity (Headquarters), the appropriate Civil Rights and

Equal Opportunity office (Regions), or the Civil Rights and Equal Opportunity Manager (Office of Disability Adjudication and Review). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws are found at the EEOC Web site– <http://www.eeoc.gov> and the OSC Web site–<http://www.osc.gov>.

#### Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).